

Application No. 09/666866
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Amendment
Attorney Docket No. S63.2N-5605-US04

REMARKS

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This Amendment is in response to the Office Action dated February 4, 2005. In the Office Action, claims 57, 79, 80, 83, 84 and 89 were allowed. In the Office Action claims 67 and 90-96 were rejected under the judicially created doctrine of obviousness-type double patenting; claims 36, 39 and 41-43 were rejected under 35 USC § 102(e) as being anticipated by Published U.S. Patent Application 2004/0230294 to Fischell et al (Fischell); claims 36-39 and 43-45 were rejected under 35 USC § 102(e) as being anticipated by U.S. 5,725,572 to Lam et al (Lam); and claim 40 was rejected under 35 U.S.C. 103(a) as being obvious over Fischell in view of U.S. 5,304,121 to Sahatjian.

Applicants respectfully disagree with the rejections set forth in the Office Action. In order to secure prompt issuance of the allowed claims however, Applicants have cancelled claims 36-45 without prejudice or disclaimer. Applicants reserve the right to continue prosecution of the subject matter of the cancelled claims in one or more subsequent continuation Applications claiming priority from the instant Application.

The following comments are presented in the same order and with paragraph headings that correspond to the Office Action.

Double Patenting

Claims 67 and 90-96 were rejected under the judicially created doctrine of obviousness-type double patenting in light of claims 1, 5, 9-14 and 16-21 of U.S. Patent No. 6,818,014.

Without forming an opinion as to the validity of the double patenting rejection, Applicants note that the projected expiration date of a patent granted on the immediate application will be the same as the expiration date of the prior '014 patent, regardless of whether or not the immediate application is subject to a Terminal Disclaimer. Therefore, in order to further timely prosecution of the immediate application, a Terminal Disclaimer is enclosed herewith that disclaims the terminal part of any patent granted on the instant application which would extend beyond the expiration date of the '014 patent. Accordingly, Applicants request withdrawal of the rejection under the judicially created doctrine of obviousness type double patenting.

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Claim Rejections 35 USC § 102

In the Office Action claims 36, 39 and 41-43 were rejected under 35 USC § 102(e) as being anticipated Fischell; and claims 36-39 and 43-45 were rejected under 35 USC § 102(e) as being anticipated by Lam.

In light of the cancellation of claims 36-45, the rejections are rendered moot. As indicated above, Applicants reserve the right to continue prosecution of the subject matter of the rejected claims in one or more continuation applications claiming priority from the instant Application.

Claim Rejections 35 USC § 103

In the Office Action claim 40 was rejected under 35 U.S.C. 103(a) as being unpatentable over Fischell in view of Sahatjian. As indicated above however claims 36-45 have been cancelled, and as a result the rejection is rendered moot.

Allowable Subject Matter

Claims 57, 79, 80, 83, 84 and 89 have been allowed. Applicant acknowledges the allowance of the instant claims.

Allowed claim 84 is an independent claim. As indicated above Applicants have added new claims 97-103, which depend from claim 84. Claims 37-103 are substantially similar to claims 37-43. The new claims are fully supported by the specification as originally filed and no new matter has been added. As the instant claims are dependent from an allowed independent claim and are supported the claims are believed to be in condition for allowance.

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Conclusion

In light of the above comments, claims 57, 67, 79, 80, 83, 84 and 89-103 are believed to be in condition for allowance. Notification to that effect is respectfully requested.

Respectfully submitted,

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